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Practice of the Secretary-General in disciplinary matters and possible criminal behaviour, 1 July 2006 to 30 June 2007

Report of the Secretary-General

Summary

The present report is submitted in response to General Assembly resolution 59/287, in which the Assembly requested the Secretary-General to inform Member States on an annual basis on all actions taken in cases of proven misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action taken in accordance with the established procedures and regulations. The report covers the period from 1 July 2006 to 30 June 2007.

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I. Introduction

1. The present report is submitted in response to paragraph 16 of General Assembly resolution 59/287, by which the Assembly requested the Secretary-General to inform Member States on an annual basis on all actions taken in cases of proven misconduct and/or criminal behaviour and the disciplinary action and, where appropriate, legal action taken in accordance with the established procedures and regulations. It covers the period from 1 July 2006 to 30 June 2007.

2. As requested in paragraph 17 of resolution 59/287, an information circular is being issued so that all staff of the Organization will be informed of the most common examples of misconduct and/or criminal behaviour and their disciplinary consequences, including any legal action, with due regard to the protection of the privacy of the staff members concerned.

3. A broad overview of the administrative machinery in disciplinary matters is provided in section II below so that the data provided in sections III and IV can be understood in context. Section III of the report contains a summary of the cases for which a disciplinary measure was imposed by the Secretary-General during the reporting period. Section IV contains comparative data and reader-friendly figures reflecting the disposition of all cases that were completed during the reporting period, including cases that did not result in the imposition of a disciplinary measure, and provides information on the practice of the Secretary-General in cases of possible criminal behaviour.

II. Overview of administrative machinery in disciplinary matters

A. Rules governing the conduct of staff members[1]

4. Article 101, paragraph 3, of the Charter of the United Nations states that the "paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and *integrity*" (emphasis added).

5. Article I of the Staff Regulations and chapter I of the Staff Rules, both entitled "Duties, obligations and privileges", set out the basic values expected of international civil servants because of their status, as well as particular manifestations of such basic values. Particular reference is made to staff regulation 1.2 and staff rule 101.2 for specific instances of expected or prohibited conduct.

B. Misconduct

6. Article X of the Staff Regulations, entitled "Disciplinary measures", provides in regulation 10.2 that "the Secretary-General may impose disciplinary measures on

[1] For a full overview of relevant provisions, see Secretary-General's bulletin ST/SGB/2002/13, entitled "Status, basic rights and duties of United Nations staff members", issued at the request of the General Assembly. Provisions relating to the status, rights and obligations of staff members, and to disciplinary matters, can also be found in the electronic Human Resources Handbook under "Status, basic rights and duties" and "Disciplinary".

staff members whose conduct is unsatisfactory". Staff rule 110.1, on misconduct, provides that "failure by a staff member to comply with his or her obligations under the Charter of the United Nations, the Staff Regulations and Staff Rules or other relevant administrative issuances, or to observe the standards of conduct expected of an international civil servant, may amount to unsatisfactory conduct ... leading to the institution of disciplinary proceedings and the imposition of disciplinary measures for misconduct". Similarly, staff rule 101.2 (a) provides that "disciplinary procedures ... may be instituted against a staff member who fails to comply with his or her obligations and the standards of conduct set out in the Charter of the United Nations, the Staff Regulations and Rules, the Financial Regulations and Rules, and all administrative issuances". Within those parameters, the Secretary-General has broad discretion in determining what constitutes misconduct and in imposing disciplinary measures. Administrative instruction ST/AI/371, on revised disciplinary measures and procedures,[2] provides further examples of conduct for which disciplinary measures may be imposed.

C. Due process

7. Where the head of office or responsible officer believes, on the basis of an investigation, that disciplinary procedures may be warranted, he or she will refer the matter to the Assistant Secretary-General for Human Resources Management for a decision on whether to pursue the matter as a disciplinary case.[3] During the period covered by the present report, preliminary investigations were undertaken by the head of office or his or her designees, or by the Office of Internal Oversight Services at its own initiative or at the request of the head of office.

8. If the Assistant Secretary-General for Human Resources Management decides to pursue the matter as a disciplinary case, the first step is to notify the staff member in writing of the allegations as well as of his or her right to seek the assistance of counsel. The staff member is given a reasonable opportunity to respond to the allegations. In the light of the comments provided by the staff member, it is decided whether to close the case, to refer it to a Joint Disciplinary Committee for advice or to summarily dismiss the staff member.

9. While the Secretary-General has broad discretionary authority in deciding upon an appropriate measure in each case, no staff member can be subjected to disciplinary measures until the matter has been referred to a Joint Disciplinary Committee for advice as to what measures, if any, are appropriate. Such referral to a Joint Disciplinary Committee may be waived when the staff member concerned and the Secretary-General agree on a disciplinary measure and the proceedings would therefore serve no valid purpose. When the seriousness of the case warrants summary dismissal, prior referral to a Joint Disciplinary Committee is not required; however, staff members who have been summarily dismissed may, at their initiative, seek a review of their case by a Joint Disciplinary Committee. All staff members

[2] Also relevant is administrative instruction ST/AI/379, on procedures for dealing with sexual harassment.

[3] The head of administration in a mission will refer the case to the Department of Peacekeeping Operations, Personnel Management and Support Service, at Headquarters, which will refer the matter to the Office of Human Resources Management if it concurs with the mission.

subjected to disciplinary measures ultimately have recourse to the United Nations Administrative Tribunal.[4]

D. Disciplinary measures

10. Staff rule 110.3 provides that disciplinary measures can take one or more of the following forms (i.e., more than one measure can be imposed in each case):

(a) Written censure by the Secretary-General;

(b) Loss of one or more steps in grade;

(c) Deferment, for a specified period, of eligibility for within-grade increment;

(d) Suspension without pay;

(e) Fine;

(f) Demotion;

(g) Separation from service, with or without notice or compensation in lieu thereof;

(h) Summary dismissal.

11. In determining the appropriate measure, each case is decided on its own merits, taking into account the particulars of the case, including aggravating and extenuating circumstances.

E. Other measures

12. Reprimands, written or oral, by a supervisory official are not considered disciplinary measures. Like warnings or letters of caution, they are administrative/managerial measures. However, they are also important measures for upholding standards of proper conduct and promoting accountability. Where inappropriate behaviour affects performance, the issue is addressed in the context of performance management. This may include training, counselling, withholding of salary increments, non-renewal of contract or termination of appointment.

III. Summary of cases for which the Secretary-General imposed a disciplinary measure during the period from 1 July 2006 to 30 June 2007

13. For each case that led to the imposition of one or more disciplinary measures, a summary is provided below indicating the nature of the misconduct and the disciplinary measure(s) imposed by the Secretary-General. The function or other particulars of the staff member are provided only when they played a role as

[4] Numerous judgements of the United Nations Administrative Tribunal relate to disciplinary measures and show the practice of the Secretary-General for those cases brought before the Tribunal. Digests of those cases can be found in the online "Case and Jurisprudence Digest" (see http://webfarmext.un.org/hrmtribunal).

aggravating circumstances in determining the measures to be taken. Conduct issues that were dealt with by means other than disciplinary measures are not listed.

14. Not every case brought to the attention of the Secretary-General results in disciplinary or other measures being taken. When a review by the Office of Human Resources Management reveals that there is not sufficient evidence to pursue a matter as a disciplinary case or when a staff member provides a satisfactory explanation in response to allegations the case is closed and the staff member is considered cleared of the allegations. Cases may also be closed when a staff member retires or is otherwise separated from the Organization before disciplinary proceedings are concluded, as the Secretary-General does not have the authority to impose disciplinary measures on former staff members. In such cases, a record is made and placed in the official status file.

A. Abuse of authority/harassment

15. A staff member verbally harassed and physically assaulted a colleague. *Disposition*: fine of six months net base salary; written censure. The staff member was also required to undertake counselling after the advice of a Joint Disciplinary Committee.

16. A staff member became publicly intoxicated and harassed a female staff member. *Disposition*: written censure after waiver of referral to a Joint Disciplinary Committee.

B. Fraud/misrepresentation

17. A staff member altered a signed list of applicants for a vacant post, thereby improperly influencing the recruitment process. *Disposition*: separation from service after the advice of a Joint Disciplinary Committee.

18. A staff member submitted a claim for education grant for a child which contained incorrect information. The staff member had relied on information provided by the child without making independent inquiries concerning its accuracy. *Disposition*: written censure after waiver of referral to a Joint Disciplinary Committee.

19. A staff member knowingly misrepresented his academic credentials on the personal history profile form submitted to the Administration. *Disposition*: separation from service after the advice of a Joint Disciplinary Committee.

20. A staff member provided another staff member with a United Nations medical certificate to assist the latter in forging medical certificates which would be used by other staff to facilitate their participation in the United Nations Inter-Agency Games. *Disposition*: written censure after waiver of referral to a Joint Disciplinary Committee.

21. A staff member submitted seven forged medical certificates to facilitate the participation of seven staff members in the United Nations Inter-Agency Games. *Disposition*: written censure after waiver of referral to a Joint Disciplinary Committee.

C. Theft/misappropriation

22. A staff member attempted to steal a quantity of truck tyre inner tubes from a United Nations vehicle repair facility. *Disposition*: written censure; payment of a fine in the amount of $200; and loss of one step within grade after waiver of referral to a Joint Disciplinary Committee.

23. A staff member diverted fuel from a United Nations tank truck to sell on the black market. When apprehended, he attempted to bribe a local policeman. *Disposition*: summary dismissal.

24. A staff member attempted to steal property on United Nations premises. *Disposition*: written censure; loss of one step within grade; one-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

25. A staff member misappropriated $1,159 of the Organization's funds. *Disposition*: separation from service after the advice of a Joint Disciplinary Committee.

26. A staff member engaged in fraud, over a period of three years, by accessing for personal use United Nations vehicles using an identity other than his own. *Disposition*: summary dismissal.

27. A staff member mismanaged various United Nations construction projects, failed to exercise proper control over subordinates, unnecessarily inflated contract estimates, and solicited and accepted a bribe from a local contractor. *Disposition*: separation from service, after the advice of a Joint Disciplinary Committee.

28. A staff member failed to return or account for within the required time frame unused monies advanced to the staff member for disbursement to others. *Disposition*: written censure after waiver of referral to a Joint Disciplinary Committee.

D. Sexual exploitation and sexual abuse

29. A staff member engaged in consensual sexual relations with a local woman in the mission area and gave money to her afterwards for expenses. *Disposition*: written censure after the advice of a Joint Disciplinary Committee.

30. A staff member engaged in sexual exploitation, sexual abuse and sexual harassment of staff members and United Nations Volunteers. The staff member also engaged in abuse of authority by seeking favours and personal benefits from staff members and United Nations Volunteers in exchange for performing official acts, and by seeking to exchange employment or services for sexual favours. *Disposition*: summary dismissal.

31. A staff member used a United Nations computer to send and receive pornographic video clips and photographs. The staff member also solicited and paid for sexual favours from local women in a mission area. The staff member further took pornographic photographs of local women, which photographs later became public. *Disposition*: separation from service after the advice of a Joint Disciplinary Committee.

E. Computer-related misconduct

32. A staff member received and widely distributed pornographic video clips and photographs using a United Nations computer. *Disposition*: demotion of one grade with no possibility of promotion for three years after waiver of referral to a Joint Disciplinary Committee.

33. A staff member received and distributed pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of three steps in grade; three-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

34. A staff member received and distributed pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of three steps in grade; three-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

35. A staff member received and stored pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of two steps in grade; two-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

36. A staff member received and stored pornographic video clips and photographs using a United Nations computer. *Disposition*: loss of two steps in grade; two-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

37. A staff member working in information technology used a password to gain unauthorized access to the United Nations e-mail account of another staff member and read that staff member's e-mail messages. *Disposition*: written censure; loss of two steps within grade; one-year deferral of eligibility for within-grade increment after waiver of referral to a Joint Disciplinary Committee.

38. A staff member accessed pornographic material over a period of 16 months using a United Nations computer. *Disposition*: loss of two steps within grade and three-year deferral for within-grade salary increment after waiver of referral to a Joint Disciplinary Committee.

39. A staff member accessed a colleague's United Nations e-mail account, copied the colleague's private note and sent it to the colleague's supervisors. At the time of the unauthorized access, the two staff members were competing for the same post. *Disposition*: demotion with no eligibility for promotion for three years and fine in the amount of one month's salary after the advice of a Joint Disciplinary Committee.

F. Conflict of interest

40. A staff member engaged in a conflict of interest in connection with a recruitment process. The staff member also acted in an insubordinate and obstructive manner during the investigation into the matter. *Disposition*: written censure after waiver of referral to a Joint Disciplinary Committee.

41. A staff member working in the procurement area engaged in a conflict of interest by entering into a commercial arrangement with representatives of a United Nations vendor. *Disposition*: summary dismissal.

IV. Disposition of all cases completed during the period from 1 July 2006 to 30 June 2007

42. The list below shows the total number of cases that were completed during the reporting period, including those that did not result in the imposition of a disciplinary measure. It should be noted that, owing to the time required to process disciplinary matters under established procedures, including the need in some cases to obtain further information after the initial investigation, the requirement to give staff members an opportunity to provide comments on charges of misconduct and referral of a case to a Joint Disciplinary Commi tee for advice, the figures reflect cases completed during the reporting period that had been referred to the Office of Human Resources Management prior to and during the reporting period.

Approximate number of staff	37 371
Number of cases completed during the reporting period	55
Summary dismissals	4
Other disciplinary measures after waiver of referral to the Joint Disciplinary Committee	15
Other disciplinary measures after advice of a Joint Disciplinary Committee	8
Administrative measures[5]	13
No disciplinary or administrative action[6]	15

V. Criminal behaviour

43. Resolution 59/287 requests the Secretary-General to take action expeditiously in cases of "proven ... criminal behaviour" and inform Member States on the actions taken. The Office of Legal Affairs has advised that criminal behaviour of staff members can be established only by competent authorities of Member States, in accordance with their criminal procedures. That office is aware of two cases during the reporting period where United Nations staff members have been subject to criminal proceedings by competent national authorities of Member States:

(a) A staff member was indicted and arrested for the criminal offence of smuggling a narcotic substance (khat) using the diplomatic pouch. The staff member entered a guilty plea for possession of a controlled substance. The staff member is awaiting sentencing;

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[5] Administrative measures include written or oral reprimands, warnings and letters of caution, all of which are important measures for upholding standards of proper conduct and promoting accountability. Additionally, where behaviour affects performance, the issue is addressed in the context of performance management, which may include training, counselling, withholding of salary increments and non-renewal of or termination of appointment.

[6] As noted in paragraph 14 of the present report, the decision not to take disciplinary or administrative action is normally based on lack of evidence of misconduct or wrongdoing. In certain cases, no action was taken because the staff member had separated from service during the investigation owing to resignation, office-wide downsizing and death.

(b) A former staff member, who had been summarily dismissed for misconduct, was indicted, tried and found guilty of mail and wire fraud, conspiracy and corruption. That individual is awaiting sentencing.

44. The Secretary-General recommends that the General Assembly take note of the present report.